

New Sales Tax Laws Affecting Contractors

Beginning July 1, 2006

Supercedes Notice Dated July 1, 2004



With the passage of LB 968 by the Nebraska Legislature, several changes were made to the laws affecting contractor labor. **All building materials and fixtures remain taxable according to the contractor option chosen.** As a result of this legislation, beginning July 1, 2006, contractor labor will be taxed in the following manner:

1. Charges for contractor labor will continue to be taxed except when performed in connection with the following projects.
 - A. The first or original construction of a new structure, building, or unit of a building;
 - B. The addition to, or remodel, restoration, repair, or renovation of a residential dwelling (see definition below). Included in this category is the addition of an entire room or floor, the completion of an unfinished portion of the dwelling, and repairs to a dwelling damaged by fire, flood, tornado, or other natural disaster;
 - C. The construction, repair, or annexation of any structure used for the generation, transmission, or distribution of electricity; and
 - D. The major addition, remodel, restoration, repair, or renovation of an existing building, unit of a building, or structure that is a single construction project that costs at least 50 percent of the current value (see definition below) of the building, unit, or structure. The addition of an entire room or floor, the completion of an unfinished portion of the building, unit, or structure, and repairs of damage caused by fire, flood, tornado, or other natural disaster is exempt provided the cost exceeds 50 percent of the current value of the building, unit, or structure. No application for approval of the project by the Department is required.
2. Charges for contractor labor performed on a building containing three or more residential units (e.g., apartment, townhouse, condominium) are taxable. An owner-occupant of the residential unit may apply for a refund of sales and use taxes paid on the charges for contractor labor performed on such unit.

Specific exemptions for the following types of projects have been repealed as of July 1, 2006. However, charges for the contractor labor may still qualify for exemption under the new categories described above.

1. The addition of an entire room or floor to any existing building;
2. The completion of an unfinished portion of an existing building or structure;

3. The repair of a building or structure damaged by fire, flood, tornado, or other natural disaster; and
4. The renovation of an existing building or unit of an existing building when at least 75 percent of the square feet of the building or unit is renovated.

Projects in Progress

The contractor labor on all projects in progress on July 1, 2006 will be subject to tax unless the new provisions noted in 1A through 1D (above) apply.

Definitions

Contractor is any person who repairs property annexed to real estate or who annexes building materials and fixtures to real estate or who arranges for such annexation.

Building means any freestanding structure annexed to land, enclosed within a roof and exterior walls, regardless of whether enclosed on all sides. Building includes mobile and modular homes.

Structure means any construction composed of building materials arranged and fitted together in some way. Structure includes items such as bridges, dams, television towers, fences, sidewalks, driveways, billboards, streets, street lighting, sewers, waterlines, and oil, gas, and water wells.

Unit means a physical portion of a building designated for separate ownership, rental, or occupancy, such as an apartment.

Current value means the value of the structure, building, or unit as determined in the records of the county assessor. If a **unit** of a building has no separate assessed value and the current value is known only for the building, then the current value for the building shall be apportioned to the unit based on square footage of floor space. If the assessor has no current assessed value, the market value as shown by an appraisal of the property by a licensed appraiser within six months prior to commencement of the construction project must be used.

Residential dwelling means a building designed for occupancy by one family or duplexes designed for occupancy by two families. Residential dwelling includes attached decks or porches and attached or detached garages. It does not include fences, landscaping, retaining walls, storage buildings, driveways, patios, sidewalks, or other structures not designed for human habitation.

Owner-occupied residential unit means a residential unit in a building containing three or more units actually occupied by the owner of record or by a person who has a life tenancy in the unit at the time of the construction project.

Building materials and fixtures annexed to real estate includes items of property which are annexed to real estate such as: cabinets, central air conditioners, heat pumps, water heaters, furnaces, electrical wiring, curtain rods, awnings, concrete, garage door openers, alarm systems, wallpaper, paint, drywall, roofing materials, plumbing, floor coverings, and lumber.

Services such as pest control services, building cleaning services, and security services are subject to tax when purchased by a contractor and cannot be purchased for resale.

All contractors will continue to pay or collect sales tax on their building materials and fixtures based on their contractor option.

Collecting and Remitting Tax

Accrual-basis contractors must report tax on each payment when the amount is billed, or when payment is received, provided the same method is used consistently for all current and future contracts. Contractors reporting tax when the amount is **billed** must use the law in effect on the **billing date** to determine the taxation of the contractor labor. Contractors reporting tax when **payment is received** must use the law in effect on the **date the payment is received** to determine the taxation of the contractor labor (see Revenue Ruling 1-06-02).

Option 1 Contractors. On taxable labor projects, Option 1 contractors are required to collect and remit sales tax on the total amount charged for building materials and contractor labor. If the billing is made to another contractor, Option 1 contractors may continue to resell the contractor labor portion of the billing tax-free and only collect tax on the charge for the building materials, provided the sale is supported by a properly completed resale certificate.

On exempt labor projects, Option 1 contractors are required to collect and remit sales tax on the separately stated materials portion of the invoice whether billing another contractor or billing the project owner.

Option 1 contractors are not permitted to use the contractor labor percentage calculation required of Option 2 and Option 3 contractors.

Option 2 and Option 3 Contractors. On taxable labor projects, Option 2 and Option 3 contractors must collect and remit sales tax on a percentage of the sales price for building materials and contractor labor (see “Contractor Labor Percentage” discussion). Option 2 and Option 3 contractors may continue to sell their contractor labor tax-free to another contractor when the sale is supported by a properly completed resale certificate.

On exempt labor projects, Option 2 and Option 3 contractors do not collect any sales tax whether billing another contractor or billing the project owner.

Contractor Labor Percentage. Option 2 and Option 3 contractors must use the following percentages when

computing sales tax due on gross receipts for taxable contractor labor projects:

Percentage for 7.0% tax rate is 57.2%;

Percentage for 6.5% tax rate is 57.4%;

Percentage for 6.0% tax rate is 57.6%; and

Percentage for 5.5% tax rate is 57.8%.

See the Department’s Web site for a more detailed explanation of the calculation and use of these percentages.

Labor-only Contracts. Contractors who are hired to apply, install, or repair building materials or fixtures owned by another person are required to collect tax on taxable labor projects as follows: Option 1 contractors must collect and remit tax on the total amount charged; Option 2 and Option 3 contractors are required to collect and remit tax on the contractor labor percentage of the gross receipts.

Tools, Equipment, Services, and Supplies. All contractors continue to pay sales or use tax on all purchases or rentals of materials, equipment, tools, services, and supplies used in providing their contracting, cleaning, maintenance, or repair services. Examples include, but are not limited to, hammers, air compressors, ladders, wrenches, screw drivers, sandpaper, saws, paint thinner, lumber to build forms, office and business equipment, lubricants, solvents, backhoes, cement mixers, scaffolding (including charges for assembly and disassembly), pest control services, building cleaning services, and security services.

Sales Tax Permit. Option 1, Option 2, and Option 3 contractors are retailers and are generally required to obtain a sales tax permit. The administrative responsibilities of retailers are summarized in our Information Guide titled “*Nebraska and Local Sales Tax*” which is available on our Web site at: www.revenue.ne.gov or call 1-800-742-7474 (toll free in Nebraska and Iowa), or 1-402-471-5729 if you are calling from outside Nebraska or Iowa.

Record Keeping. If your contractor labor charges are exempt from tax, it is necessary that you keep construction contracts, building permits, bid or building specifications, purchase orders, billing invoices, blueprints, drawings, appraisals, county valuation records, and any other documentation that contains sufficient information to accurately describe the construction work that was completed.

Other Information. Contractors seeking additional information are encouraged to review the updated information contained in our contractor information guides and the “Questions and Answers” that are posted on our Web site. You may also contact us by calling the telephone numbers listed above.

Contractors installing or repairing manufacturing machinery and equipment should refer to the “Manufacturing Machinery and Equipment Exemption” notice on our Web site.